

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186451

DATE: August 3, 1976

MATTER OF: Marion Health and Safety, Inc.

## DIGEST:

Protest against specifications included in request for proposals which is filed after closing date for receipt of proposals is untimely. Protester's assertion that it filed oral protest with contracting agency prior to time set for receipt of proposals is not supported by the record.

Marion Health and Safety, Inc. protests the specifications included in request for proposals (RFP) No. DSA120-76-R-1192, issued by the Defense Supply Agency (DSA) on January 15, 1976, for the supply of biological culture sampling tubes.

Offers in response to the RFP were received from Marion and Precision Dynamics Corporation but both took exception to the specifications. Subsequently, and in response to Marion's suggestions, the specifications were revised by Amendment 0001, issued on February 25, 1976. Precision then protested the change in specifications. In response, DSA issued Amendment 0002, again revising the specifications and calling for receipt of revised proposals by 3 p.m. on April 30, 1976.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1), states in pertinent part:

" \* \* \* In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation."

Marion's written protest was filed with this Office on May 3, 1976, 1 working day after the closing date. However, Marion alleges that 2 hours prior to the closing time its representative informed a DSA contracting official "in no uncertain terms that Marion was protesting the latest revision." On the other

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hand, DSA claims that Marion merely "express<sup>ed</sup> dissatisfaction with the specification changes contained in Amendment 0002" and "indicated that Marion might protest the latest revision."

Under these circumstances, we must regard the protest as untimely. Armed Services Procurement Regulation (ASPR) §§ 3-509, 2-407.8(a)(1)(1975 ed.) provides for the filing of oral protests with the contracting officer. ASPR § 2-407.8(a)(1) further provides that when a protest is oral and the matter cannot be otherwise resolved, the contracting officer shall (1) request written confirmation of the protest and (2) inform the protester in writing of the final decision on the written protest. Here there was neither a request for written confirmation of, nor a written decision in response to, any protest filed by Marion on April 30. In view of this record and DSA's statement that there was no oral protest, we are unable to conclude that the protest is timely. Continental Electronics Corp., B-183891, June 23, 1976, 76-1 CPD 399.

Accordingly, the protest is not for consideration and no further action will be taken by our Office on this matter.

*for Melton Bowler*  
for Paul G. Dembling  
General Counsel